IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
LETTERS PATENT APPEAL NO.4 OF 2006
IN
WRIT PETITION NO.8940 OF 2005

Smt. Kankuben Samji Patel ... Petitioner

Vs.

State of Maharashtra & Ors. ... Respondents

Mr. M.V. Aiya for the petitioner.

Mr. A.. Palekar, A.G.P. for the respondents.

CORAM : SMT. RANJANA DESAI &
D.B. BHOSALE, JJ.

DATED : 13TH JANUARY, 2006.

P.C.:-

1. In this Letters Patent Appeal, the appellant has challenged the order dated 21/12/2005 passed by the learned single judge in Writ Petition No.8940 of 2005. In that petition, the petitioner had challenged the order passed by the Minister for Food and Civil Supplies and Consumer Protection, Mumbai, by which the allotment of the ration shop to the petitioner in preference to respondent 4 was set aside and the ration shop was allotted to respondent 4.

2. We have heard the learned counsel for the appellant and the respondents at length. We must note that the learned single judge in his order has stated that no interference is called for in writ jurisdiction under Article 227 of the Constitution of India. This indicates that though the petition is filed under Article 226, it is obvious that the learned single judge has come to the conclusion that in fact it is a petition under Article 227 of the Constitution of India. Therefore, the present Letters Patent Appeal (for short, L.P.A.) against the impugned order is not maintainable.

3. In this connection, we may refer to the judgment in Letters Patent Appeal No.41 of 2005 against Writ Petition No.5180 of 1986 delivered on 19/9/2005 by the Division Bench of this court to which one of us (D.B. Bhosale, J.) was a party. The Division Bench has observed that only in cases where a judicial or quasi judicial authority or Tribunal is not covered by the power of superintendence under Article 227 of the Constitution of India, that a writ of certiorari or a writ in the nature of certiorari may be issued to prevent occurring of injustice. This court further observed that Article 226 is available to this court for correcting jurisdictional errors or errors resulting in miscarriage of justice by authorities which are not subordinate to this court via Article 227 and writ jurisdiction under

Article 226 can be exercised only for that purpose. The learned single judge has, therefore, rightly treated the writ petition as one under Article 227 of the Constitution and, therefore, this L.P.A. would not be maintainable.

4. In any case, even on merits, we feel that no interference is necessary with the impugned order. Mr. Aiya, the learned counsel for the appellant made three submissions. He firstly submitted that the appellant ought to have submitted all documents before the cut off date and it was not open for him to tender additional documents after the cut off date. He then submitted that the appellant ought to have annexed all documents to the revision application which he has not done. He lastly submitted that though there is a reference to the circular of 1995, no particular date of the circular is given in the impugned order. According to Mr. Aiya in view of the above, the impugned order deserves to be interfered with.

5. We find no substance in the submissions advanced by Mr. Aiya. Before the Minister, respondent 4 produced the tax book of Thane Mahanagarpalika to show that the structure is duly assessed. The Minister has observed that the premises of respondent 4 are in old Gaothan and since 1995, the Government has regularised such premises. There is no reason to disbelieve this statement because

before the learned single judge, respondent 4 produced the tax receipt which was produced by him before the authority. After examining it, the learned single judge has observed that the said receipt nowhere mentions that respondent 4's structure is unauthorised. The conclusion drawn by the learned single judge after examining the said receipt that the observation of the rationing officer that the tax receipt shows that respondent 4's premises are unauthorised is erroneous and false cannot be lightly brushed aside. We have also noticed that the Minister's order does not rest only on this. He has considered the fact that respondent 4 is educated unemployed and is a project affected person and therefore falls in a higher category. The learned single judge's order results in affirming this finding. We find no error of facts or law vitiating the impugned order.

6. Hence the L.P.A. is rejejcted.

[SMT. RANJANA DESAI, J.]

[D.B. BHOSALE, J.]